

**AFFIDAVIT OF PATRICK T. JONES, ESQ.  
IN OPPOSITION TO THE MOTION OF THE  
CLEAR CHANNEL DEFENDANTS TO DISMISS, OR IN THE  
ALTERNATIVE, FOR SUMMARY JUDGMENT**

The deponent first being duly sworn, deposes and states as follows:

1. I am Patrick T. Jones and am counsel of record for seventy-two of the named plaintiffs in this action, including the initial named plaintiff, Albert L. Gray.
2. I submit this affidavit for inclusion in Plaintiffs' Memorandum in Opposition to the Motion of the Clear Channel Defendants to Dismiss or in the Alternative for Summary Judgment; in support of plaintiffs' motion, filed herewith, pursuant to Fed. Rule Civ. P. 56(f); and pursuant to Local Rule 12.1(d) in response to the Clear Channel Defendants' "undisputed facts."
3. Prior to the removal of various actions to this Court, I, as a member of the Plaintiffs' Steering Committee appointed by the Superior Court of the State of Rhode Island, pursuant to authority granted by the Superior Court, filed and served document only deposition notices and subpoenas duces tecum on WHJY, Inc., Anheuser-Busch, Inc., McLaughlin & Moran, Inc., Derco LLC, LIN Television Corporation and CBS Broadcasting, Inc.
4. I attach hereto as Tab "A" the deposition notice and subpoena duces tecum which was served on WHJY, Inc. which required it to produce the documents called for by its Schedule A on August 14, 2003.
5. Subsequent to the filing and service of those notices and subpoenas, and prior to the date for production, the deponents, and defendants, removed the actions then pending in the Superior Court of the State of Rhode Island to this Court and sought and received a stay of substantive discovery, which stay continues to the present.
6. The subpoenas attempted to obtain documents from WHJY, from The Station and from Anheuser-Busch and McLaughlin & Moran which would memorialize, among other facts, the Clear Channel Defendants relationship with each other, and their contracts, agreements and relations with the Derderian brothers, Derco LLC, McLaughlin & Moran, Anheuser-Busch, or any other entity involved in the promotion of the Great White concert.
7. The document subpoena also sought to obtain documents memorializing what inquiry or investigation the Clear Channel Defendants performed prior to February 20, 2003 with respect to the safety and suitability of the Great White act as one to promote, and the suitability of The Station as a


venue for the Great White concert, and further sought to obtain all protocols, procedures or written guidelines of the Clear Channel Defendants which were in effect as of February 20, 2003, which would relate in any way to the involvement of the Clear Channel Defendants with the Great White Concert.

8. Plaintiffs believe that the Clear Channel Defendants had, prior to February 20, 2003, promulgated such policies and protocols, but plaintiffs have been unable to obtain either those documents or take testimony concerning their substance and application.
9. Plaintiffs have been unable to obtain documents or testimony which would disclose what type and manner of inquiry, minimal or otherwise, was conducted by the Clear Channel Defendants regarding the safety and suitability of the Great White performance or the venue in which it was to be held on February 20, 2003.
10. Plaintiffs have been unable to learn, by documents or testimony, of the nature, extent and substance of agreements and contracts entered into by, between and among the Derderians, Derco, Anheuser-Busch, McLaughlin & Moran and the Clear Channel Defendants with respect to roles and responsibilities, including the practical and legal concomitant rights and opportunities to control aspects of the Great White performance of February 20, 2003.
11. Plaintiffs have been unable to obtain documents and testimony reflecting the Clear Channel Defendants' knowledge of Great White's use of pyrotechnics.
12. Great White not only reportedly used unlicensed pyrotechnics on multiple occasions during its tour in the weeks before February 20, 2003 (Kansas City Star article attached at Tab B), but several venue operators reportedly prevented Great White from using them.
13. Plaintiffs believe, in good faith, that they are entitled to obtain the testimony and documentary evidence referred to in ¶¶7 - 11 above in order to controvert the assertions raised as "undisputed facts" by the Clear Channel Defendants.
14. For example, with respect to both ¶10 of the Clear Channel Defendants' "Ominibus Statement of Undisputed Facts" and ¶10 of the Affidavit of Michelle Maker Palmieri in support of that statement, the Clear Channel Defendants state that WHJY had no responsibility for controlling, and did not control, any use of pyrotechnics by Great White. Plaintiffs' counsel suggests that this is a conclusion, rather than a fact and, to the extent it is treated as a fact, plaintiffs are entitled to the production of the documents

and testimony referenced above in order to respond to, and oppose, that assertion.

15. Accordingly, plaintiffs represent, pursuant to Rule 56(f) that they require, and are entitled to, discovery in order to obtain facts essential to their opposition to the Clear Channel Defendants' motion, and ask this Court to refuse the application of the Clear Channel Defendants or defer any ruling on the application until plaintiffs are permitted to obtain the facts relating to those issues in dispute which are uniquely within the control of the defendants in this action.
16. Plaintiffs have a good faith basis for asserting control by the Clear Channel Defendants, and have been able to obtain certain affidavits to rebut the Clear Channel Defendants' assertions, including the affidavits of Kevin J. Beese and John Arpin which directly rebut the Clear Channel Defendants' assertion that they had no right to control the Great White performance and its use of pyrotechnics.
17. The Clear Channel Defendants' Omnibus Statement of Undisputed Facts, and defendants' brief, are entirely silent as to the existence and substance of Clear Channel Defendants' policies and protocols with respect to their involvement in the Great White performance, silent as to the details of agreements into which they entered, and further entirely silent with respect to what inquiry, minimal or otherwise, the Clear Channel Defendants engaged in with respect to the suitability of the Great White concert for the venue selected prior to the fire.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 22d DAY  
OF November, 2004.

  
\_\_\_\_\_  
Patrick T. Jones

**A**

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

IN RE: THE STATION FIRE IN : M.P. NO. 03-1326  
WEST WARWICK : M.P. NO. 03-1346  
: M.P. NO. 03-1431


**NOTICE TO TAKE DEPOSITION**

DEPONENT: WHJY, Inc.  
200 East Basse Road, San Antonio, TX 78209

DATE: Thursday, August 14, 2003  
TIME: 12:00 noon

PLEASE TAKE NOTICE that pursuant to R.C.P. 26, the attorney for petitioners in the above-captioned matter will take the deposition of the above-named individual on oral examination, which examination will continue from day to day until completed, the same to commence on the date and time above stated at the offices of COOLEY MANION JONES LLP, One Center Place, Providence, Rhode Island, before a Notary Public duly commissioned in the State of Rhode Island.

PLEASE TAKE FURTHER NOTICE that a subpoena duces tecum will issue in the form annexed hereto.

  
\_\_\_\_\_  
Patrick T. Jones (6636)  
COOLEY MANION JONES LLP  
One Center Place  
Providence, RI 02903  
(401) 273-0800

DATED: July 28, 2003

**SCHEDULE "A"**

1. All documents which set forth the legal and operational relationship between WHJY, Inc. and Clear Channel Communications, Inc. as of February 20, 2003.
2. All documents in existence as of February 20, 2003 which refer or relate to the Great White concert at The Station of February 20, 2003.
3. All documents, to specifically include written text, audio tapes, discs, and all other electronic storage media, which contain the text of any advertisement for the Great White concert of February 20, 2003.
4. All documents which memorialize the date and time on which WHJY played on air, any advertisement or notice of the Great White concert at The Station of February 20, 2003.
5. All documents which memorialize any material placed or posted on WHJY's web site prior to and including February 20, 2003, relating to the Great White concert at The Station on February 20, 2003.
6. All documents which fully disclose the identities of each WHJY employee, agent or intern involved in the promotion or advertising of the Great White concert at The Station on February 20, 2003, including any employee physically present at The Station on February 20, 2003.
7. All documents generated on or prior to February 20, 2003 between WHJY and any of Jeffrey Dederian, Michael Dederian, Derco, Inc., the band known as Great White, Manic Music Management, Inc., McLaughlin & Moran, Anheuser-Busch, or any advertising or promotional agency relating to the Great White concert of February 20, 2003.
8. All documents generated prior to February 20, 2003 between WHJY and any of Jeffrey Dederian, Michael Dederian, Derco, Inc., its agents, servants or employees, the band known as Great White, Manic Music Management, Inc., McLaughlin & Moran, Anheuser-Busch, or any advertising or promotional agency relating to any concert at The Station from January 1, 2000 to February 20, 2003.
9. All documents which memorialize or reflect any expense incurred by WHJY in connection with the Great White concert at The Station of February 20, 2003.
10. All documents which memorialize or reflect any tickets provided to WHJY for the Great White concert of February 20, 2003.

11. All documents in the custody or control of WHJY which were in existence as of February 20, 2003 which refer or relate to WHJY, Anheuser-Busch, McLaughlin & Moran or Budweiser as a co-sponsor or co-promotor of the Great White concert of February 20, 2003.
12. All protocols, procedures or written guidelines in effect on February 20, 2003 which relate to WHJY's promotion or sponsorship of concerts.
13. All policies of insurance in effect as of February 20, 2003 which may respond to claims against WHJY arising out of the catastrophic fire at The Station on February 20, 2003.
14. All indemnity agreements to which WHJY, Inc. is a party which may apply to any claims asserted against WHJY arising out of the catastrophic fire at The Station on February 20, 2003.
15. All documents which existed as of February 20, 2003 which refer or relate to or memorialize any investigation or inspection done by WHJY or its agents and employees, with respect to the suitability of The Station as a venue for a concert to be promoted or sponsored by WHJY.
16. All documents which memorialize, refer or relate to WHJY's knowledge as of February 20, 2003, of the legal capacity for the Great White concert at The Station, the anticipated number of patrons to be attending that concert and/or the number of tickets sold for said concert.
17. All documents which refer or relate to any knowledge of WHJY, its agents, servants or employees of the use of pyrotechnics by the band Great White prior to February 20, 2003.

10/10/03

**CERTIFICATION**

I hereby certify that on the 18<sup>th</sup> day of July, 2003, an exact copy of the within document was mailed to:

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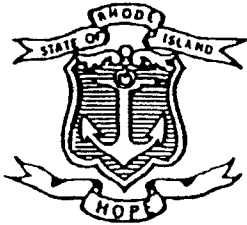
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Kathleen A. DeFazio



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
**SUBPOENA**  
SUPERIOR COURT

☒ PROVIDENCE/BRISTOL      ☐ KENT      ☐ WASHINGTON      ☐ NEWPORT

1. IN RE: THE STATION FIRE IN WEST WARWICK VS. .....	2. CASE NO. MP NO. 03-1326 MP NO. 03-1346 MP NO. 03-1431 .....
------------------------------------------------------------	-------------------------------------------------------------------------

WHJY, Inc.  
TO 200 East Basse Road, San Antonio, TX 78209

☐ YOU ARE HEREBY COMMANDED to appear in the Superior Court for the above County on \_\_\_\_\_ to testify in the above entitled action [and bring with you: \_\_\_\_\_ DATE \_\_\_\_\_]

LOCATION OF COURT

COURTROOM#

DATE

TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above entitled action.

COOLEY MANION JONES LLP  
One Center Place, Providence, RI 02903  
LOCATION OF DEPOSITION

AUGUST 14, 2003  
12:00 noon  
DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE EXHIBIT A.

DOCUMENTS/OBJECTS  
COOLEY MANION JONES LLP  
One Center Place, Providence, RI 02903  
LOCATION

AUGUST 14, 2003  
DATE

ROOM#  
12:00 noon  
TIME

☐ YOU ARE COMMANDED to produce and permit inspection of the following premises at the date and time specified below.

LOCATION

ROOM#

DATE

TIME

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books; papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to their person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an office of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iii) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonable compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**B**

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Posted on Fri, Feb. 21, 2003

## Great White tour schedule and pyrotechnic information

Associated Press

Partial glance at Great White's 2003 North American tour and its use of pyrotechnics, according to venue officials and others:

Jan. 9, Palo Alto, Calif.: Great White band did not use pyrotechnics at the Edge Nightclub, according to the club's talent buyer.

Jan. 12, San Diego, Band did not use pyrotechnics during a show at Fourth and B, according to owner. The club requires a fire department permit.

Jan. 18-20, Honolulu: Band did not use pyrotechnics during shows at Gussie L'Amour's, club owner said.

Jan. 23, Glendale Heights, Ill.: Band manager mentioned using pyrotechnics, but Shark City manager said club does not allow them and effects were not used.

Jan. 24, Medina, Minn.: Band did not use pyrotechnics at Medina Entertainment Center, according to venue's general manager.

Jan. 25, Hewitt, Minn.: Great White used "flashpots" at the Checkers Bar. Club booker Brian Hendershot said club was informed in advance.

Jan. 27, Sioux City, Iowa: Great White used pyrotechnics. Dan Lewis, owner of Lewis Bowl & Sports Bar, could not recall whether band sought permission.

Jan. 28, Altoona, Wis.: Band did not use or ask for permission to use pyrotechnics, Evolution manager Steve Vig said.

Jan. 30, Milwaukee: Band apparently used pyrotechnics, though the Rave club did not have a permit for the effects, said Todd Weiler, spokesman for the Milwaukee Department of Neighborhood Services.

Jan. 31, Lemont, Ill.: Band did not use pyrotechnics at Sean Kaley's,



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according to bar employee.

\_Feb. 1, Detroit: Band did not use pyrotechnics at Harpos Concert Theater, club manager said.

\_Feb. 3, Evansville, Ind.: Band complied with request not to use pyrotechnics at Oxygen, owner said.

\_Feb. 7, Pinellas Park, Fla.: Band used pyrotechnics without discussing it with concert organizers at the Pinellas Park Expo Center, said Tim Bryant, president of Past to Present Productions.

\_Feb. 8, Boynton Beach, Fla.: Band complied with request not to use pyrotechnics at Ovation, owner said.

\_Feb. 10, Atlanta: Band did not use pyrotechnics at The Riviera Club, club production manager said.

\_Feb. 11, Winston-Salem, N.C.: Officials at Ziggy's Tavern told fire marshal band did not use pyrotechnics.

\_Feb. 13, Allentown, Pa.: Band used pyrotechnics at the Crocodile Rock Cafe without notice, owner Joe Clark said.

\_Feb. 14, Asbury Park, N.J.: Band used pyrotechnics at the Stone Pony without telling club officials, owner Domenic Santana said.

\_Feb. 15, Wantagh, N.Y.: An employee from Mulcahy's said the club had no comment.

\_Feb. 18, Bangor, Maine: Pyrotechnics were used during Great White's performance without permission, said Thad Zmistowski, lawyer for the owner of Russell's entertainment complex.

Source: Band's Web site, Associated Press interviews.

   
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PHOTOS

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